

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 23-01138-mg

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6 In the Matter of:

7

8 CELSIUS NETWORK LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED,

13 Plaintiff,

14 v.

15 STAKEHOUND SA,

16 Defendant.

17 - - - - - x

18

19 United States Bankruptcy Court

20 One Bowling Green

21 New York, NY 10004

22

23 August 29, 2023

24 10:58 AM

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1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: KS

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1 HEARING re Adversary proceeding: 23-01138-mg Celsius Network  
2 Limited v. StakeHound SA Hearing Using Zoom for Government  
3 RE: TRO (Doc # 29, 31, 33 to 42, 49, 50, 51).  
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Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 CLERK: All right. Starting the record for August  
3 29th, 2023 the 11 a.m. hearing. Calling Celsius Network  
4 LLC, Case No. 22-10964 and the following case, Case No. 23-  
5 1138 Celsius Network Limited versus StakeHound SA. If we  
6 could have counsel unmute meet their line and state their  
7 appearances, please.

8 I think we have -- is anyone in the conference  
9 room going to be speaking? I see Stephanie. I can't  
10 recognize anyone else. All right, you can pause it for now.

11 MAN: -- muted. Oh, there we go.

12 MS. WICKOUSKI: Sorry, this is -- can you hear me  
13 now?

14 CLERK: Yes, I can.

15 MS. WICKOUSKI: So this is Stephanie Wickouski  
16 from Locke Lord on behalf of the defendant StakeHound SA,  
17 and here with me in the Locke Lord conference room is my  
18 colleagues Jeff Kramer and Sean Feener.

19 CLERK: All right, thank you.

20 MS. WICKOUSKI: And both myself and Mr. Kramer  
21 will be addressing the Court this morning.

22 CLERK: All right. Thank you so much You can  
23 pause the recording.

24 (Pause)

25 CLERK: For the parties that have joined, if



1 anyone is speaking on the record this morning, please unmute  
2 your line and state your name.

3 Yeah, Ms. Scott, are you going to be speaking?

4 MS. SCOTT: Good morning. I'm not certain, but  
5 I'll go ahead and enter my appearance if that's okay.

6 CLERK: Sure.

7 MS. SCOTT: Elizabeth Scott from Akin Gump,  
8 special litigation counsel to the Debtors.

9 CLERK: All right. Thank you. We have --

10 MS. SCOTT: Ms. Anderson, we have with us on the  
11 screen, Albert Castellana who's representative of our client  
12 StakeHound who is a witness, having submitted a declaration.  
13 So he's also available.

14 CLERK: Thank you. All right, you can pause the  
15 recording.

16 (Pause)

17 Oh, all right, for the parties that have joined,  
18 if you could unmute your line one at a time and state your  
19 appearance for the record.

20 Mr. Hurley, maybe we could start with you.

21 MR. HURLEY: Good morning. Mitch Hurley with Akin  
22 Gump, special litigation counsel for Celsius.

23 CLERK: All right. Thank you. Is there any other  
24 party on the line that is speaking this morning? If so, I  
25 unmute your line and state your appearance.

1 MS. WICKOUSKI: Good morning. This is Stephanie  
2 Wickouski from Locke Lord on behalf of StakeHound SA and I'm  
3 here with my colleagues Jeffrey Kramer and Sean Feener and  
4 Mr. Kramer and I will be addressing the Court.

5 CLERK: All right. Thank you. Mr. Wofford, are  
6 you going to be speaking this morning?

7 MR. WOFFORD: I don't anticipate as such, but I  
8 will enter an appearance. Keith Wofford on behalf of the  
9 Official Committee of Unsecured Creditors from the firm  
10 White & Case LLP. Good morning.

11 CLERK: Good morning. Thank you. All right. Any  
12 additional parties that have joined that are speaking on the  
13 record this morning? If so, please unmute your line and  
14 state your appearance.

15 MS. WICKOUSKI: Ms. Anderson, this is Stephanie  
16 Wickouski for the record. I just wanted to note that what  
17 our declarant Albert Castellans is also on the call to be  
18 available for cross examination.

19 CLERK: All right, thank you.

20 MR. HURLEY: May I just interject there please,  
21 Deanna? I -- my understanding from the judge is that he had  
22 said specifically this was not going to be an evidentiary  
23 hearing.

24 CLERK: Well, to my knowledge, I'm not sure Mr.  
25 Hurley how this affects things, but you could definitely

1 bring it up to him and he'll make the determination.

2 MR. HURLEY: Okay.

3 CLERK: Yeah.

4 MS. WICKOUSKI: And Ms. Anderson, for the  
5 avoidance of doubt, I wasn't suggesting as to how the Court  
6 would be conducting this hearing, but because we had  
7 submitted Mr. Castellana's declaration as a matter of form,  
8 we were required to produce him in person on the Zoom for  
9 cross examination if the parties wished.

10 CLERK: All right. Thank you.

11 MR. HURLEY: Just to be clear, the only -- I don't  
12 have any objection to Mr. Castellana being here. It's only  
13 that we, based on that understanding, our declarants are not  
14 here, which, you know, obviously we'll address that with the  
15 judge if he has an issue with it.

16 CLERK: Perfect. Thank you. All right, please  
17 pause the recording for now.

18 (Pause)

19 THE COURT: Yes, please.

20 CLERK: Sorry about that.

21 THE COURT: Sorry about that. Again, I apologize.  
22 I was connected for an earlier hearing without any  
23 difficulty on my computer. I can't reconnect on it. And  
24 so you see me without my courtroom virtual background. I'm  
25 doing this on my iPad. I can see all of you, though. Mr.

1 Hurley, are you going to begin?

2 MR. HURLEY: Yes, Your Honor. Again for the  
3 record, Your Honor, it's Mitch Hurley with Akin Gump,  
4 special litigation counsel for Celsius. We're here on  
5 Celsius' motion for a temporary restraining order.

6 I want to start, Your Honor, by making crystal  
7 clear what it is that Celsius is seeking on this motion and  
8 what it's not seeking. The relief that Celsius seeks today  
9 is quite limited. It is a order preserving the status quo  
10 for a short period of time. The period of time specifically  
11 is from today through the day on which Your Honor -- or  
12 through the time at which Your Honor is able to hear and  
13 determine the motion for a preliminary injunction. That  
14 motion is scheduled to be heard on September 27th. So we're  
15 talking about a period of about four weeks.

16 In terms of the restraint, what we're seeking is  
17 an order preserving the status quo with respect to the  
18 subject assets for that four-week period of time, but  
19 subject to the provision in the proposed TRO that provides a  
20 safety valve so that in the event that during that, even  
21 that brief period of time there is some truly urgent  
22 expense, it can be brought to the attention first of Celsius  
23 and if parties can't reach agreement, then to Your Honor.

24 Preserving the status quo is of critical  
25 importance to Celsius in this case. That is because Celsius

1 has claims against StakeHound upwards of \$160 million and  
2 understands that StakeHound's assets are limited to about  
3 \$90 million, virtually all of which are assets that were  
4 provided to it by Celsius in the first instance so that any  
5 dollar that's spent between now and the 27th is a dollar  
6 that cannot be recovered by Celsius if and when it prevails  
7 on its claims with respect to the assets that it provided.

8 So before I get into the specifics of my argument,  
9 Your Honor, I thought it would make sense just to provide a  
10 refresher on some of the -- some of the main facts in the  
11 case and I'll do this quickly and limit myself to what I  
12 understand to be undisputed facts.

13 So StakeHound launched its business at the end of  
14 2020. The business was providing liquidity to holders of  
15 staked tokens, primarily ETH. At that time, ETH tokens when  
16 they were staked were not available to be retrieved by the  
17 staker and wouldn't become available until an event  
18 anticipated in the future referred to as the upgrade  
19 sometimes called the Shanghai upgrade, after which ETH would  
20 become available to be retrieved.

21 At the time, the anticipation was that it would  
22 take two years or more before that event happened and in the  
23 event, it actually did take longer than two years, the  
24 Shanghai upgrade wound up taking place on April 12th, 2023.  
25 StakeHound's business was providing one stETH in exchange

1 for one native ETH that was staked. StakeHound would run  
2 the notes. The parties would split the rewards from the  
3 staked ETH and the customer would be able to use the stETH  
4 on defi applications and then when ETH became available  
5 exchange it on a 1-to-1 basis for the ETH.

6 It's undisputed that Celsius was not only  
7 StakeHound's first customer, it effectively was its only  
8 customer from the perspective, at least, of assets  
9 contributed. StakeHound itself alleges that of all the ETH  
10 that StakeHound ever got, 96 percent of it was provided by  
11 StakeHound -- by Celsius. And let me describe that very  
12 briefly.

13 In November of 2020, Celsius had staked about  
14 25,000 ETH and in January of 2021, it determined to transfer  
15 the notes for that 25,000 November ETH to Celsius in  
16 exchange for the same number of stETH. It did that pursuant  
17 to an agreement called the Stake and Services Agreement or  
18 the SSA and StakeHound got back exactly the same number of  
19 stETH as associated with the notes in November.

20 In February, Celsius determined to stake another  
21 35,000 ETH with StakeHound. It did that pursuant to  
22 StakeHound's ordinary terms and conditions and it got back  
23 exactly the same number of stETH for the 35,000. In April,  
24 the parties entered into an agreement called the Revenue  
25 Sharing Agreement and pursuant to that agreement, Celsius

1 provided about 40 million native MATIC tokens and hundreds  
2 of thousands of native DOT tokens to StakeHound and got back  
3 exactly the same number of stMATIC and stDOT, again with the  
4 expectation of a 1-to-1 exchange being available.

5 It's undisputed that in May, the next month, some  
6 combination of StakeHound and Fireblocks, the entity that  
7 StakeHound hired to provide security for its tokens, made a  
8 catastrophic mistake and some combination of those two  
9 parties -- they point the finger at one another -- lost the  
10 pass keys for the February 35,000 ETH and StakeHound has  
11 alleged that it is now irretrievable. And so -- but assured  
12 Celsius at the time that the November ETH remained secure,  
13 and we understand that November ETH in fact does remain  
14 secure.

15 So fast forward now to April 2023, and let me just  
16 back up. In June of 2021 StakeHound alleges that it  
17 shuttered its operations, its liquidity staking operations,  
18 et cetera, and the understanding now is that effectively  
19 what it's doing since then is collecting rewards, basically  
20 collecting interest on the coins that are staked and these  
21 are coins that were provided by Celsius.

22 Now fast forward to April 2023. Celsius learns  
23 that the Shanghai upgrade is likely imminent. On April  
24 10th, we send a letter to StakeHound demanding that they  
25 confirm that once the upgrade occurs and the assets become

1 available, that they will do what they're required to do  
2 under the SSA which is transfer those assets to a separate  
3 wallet and then allow us to exchange our stETH for the  
4 November ETH which is the only ETH that was subject to the  
5 SSA and which is the ETH that remains secure.

6 On April 12th, two things happened. First, the  
7 Shanghai upgrade occurred. And second, we got a letter from  
8 StakeHound saying that they were refusing.

9 THE COURT: Mr. Hurley, can --

10 MR. HURLEY: Yes.

11 THE COURT: -- just hold on a minute? I -- while  
12 I've been listening carefully to you, but I've also rebooted  
13 my computer and it seems to want to allow me in. So let me  
14 see if we can do this smoothly, okay?

15 MR. HURLEY: Yeah, yeah.

16 THE COURT: What I'm going to do is mute my sound  
17 so I don't get feedback.

18 CLERK: -- you, Judge.

19 THE COURT: All right, I'm closing my -- just give  
20 me -- all right, can you hear me?

21 MR. HURLEY: Yes.

22 THE COURT: Hold on. I still haven't managed to  
23 close my iPad.

24 MR. HURLEY: Okay. I had a similar issue on our  
25 last hearing, so I have sympathy.



1 THE COURT: All right. Can you hear me now?

2 MR. HURLEY: Yes.

3 THE COURT: Good. Okay. I did hear everything  
4 you had to say, so just pick up from where you were.

5 MR. HURLEY: Okay, will do.

6 So undisputed that Celsius made a demand for  
7 exchange of its ST tokens for native tokens and that demand  
8 was refused. That was April 12th. On April 17th, Celsius  
9 wrote back and said among other things that any failure to  
10 turn the tokens over could result in significant liability  
11 under the Bankruptcy Code, referencing this bankruptcy  
12 proceeding, but offered in that letter to enter into a  
13 standstill to see if the parties could negotiate.

14 Rather than respond to that letter, StakeHound  
15 filed an arbitration in Switzerland in late April, in  
16 violation, we contend, of the automatic stay. On May 1st,  
17 Celsius wrote and demanded withdrawal of the arbitration,  
18 but again, offered to sit down and have a discussion. We  
19 did not receive a response to that communication.

20 On May 25th, Celsius sent a letter to StakeHound  
21 saying, please, we tendered our stMATIC and our stDOT and  
22 demanded returned of the native MATIC, the native DOT. That  
23 letter was never responded to and the native MATIC and  
24 native DOT was never returned and no excuse for the failure  
25 to return the native MATIC and native DOT has ever been

1 offered by StakeHound.

2 We made some other efforts to see if there could  
3 be a resolution. We weren't able to get there. We filed in  
4 July, the original complaint in this case, seeking our  
5 certain claims based on the violation of the automatic stay  
6 and based on Celsius' refusal to exchange ST tokens for  
7 native tokens. This motion, as I mentioned before, seeks  
8 just for the next four weeks to ensure that the property  
9 that's at issue, those native tokens -- virtually all of  
10 which were provided to StakeHound on by Celsius -- will  
11 remain there for Your Honor to decide what to do with them  
12 in four weeks.

13 We think that the standards for getting a  
14 temporary restraining order are readily met on the facts of  
15 this case and I'm just going to turn now to our argument,  
16 Your Honor, and I'll start with the standard for entry of  
17 the temporary restraining order. The elements are familiar.

18 You have to show irreparable harm, likelihood of  
19 success on the merits, and balance of the harms weigh in  
20 favor of the movant, or sufficiently serious questions going  
21 to the merits of the movant's claims to make them a fair  
22 ground for litigation, and that the balance of harms tips  
23 decidedly in the movant's favor. We think that we readily  
24 meet both standards here, Your Honor and I want to start --

25 THE COURT: Let me interrupt you.

1 MR. HURLEY: Sure.

2 THE COURT: And my questions, and I do have  
3 multiple questions, but I'll ask one now, is the effect of  
4 the Supreme Court's decision in Grupo Mexicano v. Alliance  
5 Bond Fund, 527 U.S. 308 (1999), you didn't address it at all  
6 in your brief. Ms. Wickouski has a footnote in her brief  
7 that at least cites Grupo Mexicano, and I guess my question  
8 is specific. And I've reviewed both the original complaint  
9 and the amended complaint.

10 And tell me which of the claims in the amended  
11 complaint you believe permits the Court to enter a TRO with  
12 respect to the asset freeze. Let's put aside the issue of  
13 alleged violation of the automatic stay in commencing the  
14 arbitration. I'm focusing on the asset freeze issue. So  
15 tell me specifically which claims in the amended complaint  
16 you believe would permit the Court to enter the TRO with an  
17 asset freeze.

18 MR. HURLEY: Certainly. May I first just respond  
19 to the, the point about whether Grupo Mexicano changed the  
20 role in the Second Circuit? Because I have the specific  
21 cite for Your Honor if that would be helpful.

22 THE COURT: Sure. Go ahead.

23 MR. HURLEY: Okay. So the Second Circuit  
24 addressed this exact question in Citigroup v. VCG. That's  
25 598 F.3d 30 (2d Cir. 2010). And this is what the Second

1 Circuit had to say when it made clear that notwithstanding  
2 Grupo Mexicano, the standard that the Circuit had  
3 traditionally applied remains in place. And this is a  
4 quote.

5 "The value of this Circuit's approach to assessing  
6 the merits of a claim at the preliminary injunction stage  
7 lies in its flexibility in the face of varying factual  
8 scenarios and the greater uncertainties inherent at the  
9 outset of particular complex litigation. Preliminary  
10 injunction should not be mechanically confined to cases that  
11 are simple or easy, requiring in every case a showing that  
12 ultimate success on the merits is more likely than not is  
13 unacceptable as a general rule.

14 "The very purpose of an injunction is to give  
15 temporary relief based on a preliminary estimate of the  
16 strength of the plaintiff's suit prior to the resolution at  
17 trial of the factual disputes and difficulties presented by  
18 the case. Limiting the preliminary injunction to cases that  
19 do not present significant difficulties would deprive the  
20 remedy of much of its utility." That's the Second Circuit  
21 on that point, Your Honor.

22 THE COURT: What's the year of that, of the  
23 Citigroup decision?

24 MR. HURLEY: That's 2010, more than ten years  
25 after a Grupo Mexicano, in other words.

1 THE COURT: And does it address Grupo Mexicano  
2 over there?

3 MR. HURLEY: Yes.

4 THE COURT: And how -- I've read a lot of cases in  
5 the last two days and I don't think that's one of them. How  
6 does it distinguish Grupo Mexicano?

7 MR. HURLEY: Sorry, the -- I think what it finds  
8 is that there's nothing in Grupo Mexicano that requires a  
9 change in the Second Circuit's standard and the Second  
10 Circuit, based on that conclusion in Citigroup explained why  
11 it continues to maintain the same standard, which is that  
12 you have two ways of getting to likelihood of success on the  
13 merits.

14 THE COURT: And would -- and I do need to read it.  
15 I'm not going to rule from this hearing, you know, from the  
16 bench today. Does the Citigroup decision permit a TRO if  
17 the only claim asserted is a breach of contract claim?

18 MR. HURLEY: I confess, I don't know the specific  
19 answer to that question, Your Honor, but coming back to the  
20 other question that you had about what claims we believe  
21 support the relief that we're seeking --

22 THE COURT: Right.

23 MR. HURLEY: -- it's not only the breach of  
24 contract claim. It's also --

25 THE COURT: I don't think -- personally, I don't

1 think the breach of contract claim does support it. I will  
2 read Citigroup with great interest, but you know I read  
3 Grupo Mexicano as precluding an asset freeze in a breach of  
4 contract case. It's -- that -- well, but go -- I want to  
5 read Citigroup. I've read a lot of cases over the last  
6 couple of days because you didn't brief any of this. So you  
7 don't know whether Citigroup -- what were the claims  
8 asserted in the Citigroup case?

9 MR. HURLEY: Your Honor, I -- my familiarity with  
10 the specific facts of Citigroup isn't that great. It's  
11 really -- I really just cited for the proposition that the  
12 notion that that Grupo Mexicano changed the standard and the  
13 Second Circuit has been directly contradicted by the Second  
14 Circuit.

15 THE COURT: Let me ask you. Did it address, did  
16 that decision address Grupo Mexicano?

17 MR. HURLEY: Yes, Your Honor. It did. What I  
18 read was specifically in response to a contention that the  
19 standard has been changed as a result of a Grupo Mexicano.

20 THE COURT: All right. Let's hold on. I'm going  
21 to open the decision on another -- on the iPad which I'm not  
22 using now for the Zoom. Just bear with me.

23 MR. HURLEY: And Grupo Mexicano, Your Honor, is  
24 really, I think is a question about what constitutes  
25 irreparable injury. And in our case, we're obviously

1 relying on the contention --

2 THE COURT: I don't read Grupo Mexicano that way.

3 Okay?

4 MR. HURLEY: Okay.

5 THE COURT: I read it as not permitting an asset  
6 freeze. It's a collection mechanism in a breach of contract  
7 dispute before there's a judgment and a judgment lien  
8 attaching. And bear with me. Just give me a moment here,  
9 okay? Because I do think this is important. If I've  
10 misread Second Circuit law on it, well, then I'll stand  
11 corrected.

12 MR. HURLEY: But again, I -- well. So the  
13 Citigroup case is from 2010 and just to be really clear, the  
14 only thing that we're citing that Citigroup case for, Your  
15 Honor, is the proposition that the standard in the Second  
16 Circuit, notwithstanding some Supreme Court case law that  
17 people had argued might have changed the standard in the  
18 Second Circuit, the standard in the Second Circuit remains  
19 that there was more than one way to satisfy the likelihood  
20 of irreparable harm prong of seeking a preliminary  
21 injunction.

22 And that it includes situations where if the  
23 balance of the equity is weigh strongly in favor of the  
24 movant, that the standard for demonstrating likelihood of  
25 success is lower. And I and I do apologize, Your Honor,

1 that this hasn't been the focus of my preparation.  
2 Certainly to the extent Your Honor is not going to rule  
3 today and you'd like some additional very brief submissions,  
4 we could do that, but our citation again of this Citigroup  
5 is for that limited purpose.

6 THE COURT: All right, I have the case. You don't  
7 have the case in front of you, do you?

8 MR. HURLEY: I do not, Your Honor.  
9 Your Honor?

10 THE COURT: Yes.

11 MR. HURLEY: Let me direct your attention. I  
12 actually now have the case in front of me, and --

13 THE COURT: Which page?

14 MR. HURLEY: Yeah, so it is page -- sorry, looking  
15 for the cite. It would be \*34 discussion, and my  
16 recollection of the Supreme Court cases that were being  
17 discussed was incorrect. The Supreme Court cases that were  
18 being discussed there were Munaf, Winter, and Nken, and --

19 THE COURT: What were the underlying claims in  
20 Citigroup?

21 MR. HURLEY: Well, Your Honor, I'm afraid I have  
22 to give the same answer because I've just opened it up, but  
23 if you see under Section 1, the continued viability of the  
24 serious questions standard.

25 THE COURT: Well, I don't doubt that the serious



1 question standard applies, but query whether it applies if  
2 it's being used as a collection tool, okay. So you added a  
3 constructive trust claim and there's caselaw that would  
4 permit a TRO or preliminary injunction with an asset freeze  
5 in support of a viable constructive fraud, you know,  
6 constructive trust claim.

7 And I assumed that one of your minions decided we  
8 better add that claim to the complaint because otherwise we  
9 may be in trouble with respect to the Grupo Mexicano  
10 standard. Perhaps I read too much into the addition of that  
11 claim, but I'm not sure, you know, simply alleging -- if I'm  
12 wrong -- put it this way. If I'm wrong, if the Second  
13 Circuit overruled the Supreme Court's Grupo Mexicano ruling  
14 which says it just simply doesn't apply in the Second  
15 Circuit -- it would be pretty neat trick if it did --

16 MR. HURLEY: That's certainly not what I'm  
17 suggesting, Your Honor, and I apologize for the  
18 miscommunication over Citigroup. With respect to Grupo  
19 Mexicano, you are correct that we cite a number of -- or  
20 sorry, that we allege a number of claims that we think are  
21 not subject to the holding of Grupo Mexicano.

22 THE COURT: Tell me which claims. That was -- to  
23 go back, that's what my question was. Tell me which claims  
24 you believe would permit the Court, assuming that the normal  
25 standard for injunctive relief is -- has been satisfied,

1 that would permit the Court to enter a TRO or preliminary  
2 injunction.

3 MR. HURLEY: Certainly the claim for the -- for an  
4 accounting, unjust enrichment, the claim for constructive  
5 trust, the claim for conversion.

6 THE COURT: Conversion, I -- well, go ahead. Give  
7 me the list, okay.

8 MR. HURLEY: Those are the claims that we think  
9 would justify the injunction.

10 THE COURT: I thought conversion is a legal claim,  
11 not an equitable claim. What I read Grupo Mexicano is  
12 saying that Rule 65 of the Federal Rules of Civil Procedure  
13 does not provide for an equitable remedy for legal claims.  
14 And so, you know, unjust enrichment, that claim won't even  
15 stand if the underlying circumstances are governed by  
16 contract. There is a contract between the two of you.  
17 Conversion, I understood be a legal claim. Constructive  
18 trust is an equitable -- can be an equitable claim.  
19 Accounting, I'm not sure about. Do you have -- is an asset  
20 freeze permissible for an accounting claim? You have  
21 authority? Look, I'm -- let's make no secret about it. I'm  
22 going to require a supplemental brief from you. You didn't  
23 address this at all. Ms. Wickowski only sort of  
24 backhandedly has one, Footnote 5, I think, that along with a  
25 number of other sites refers to the Grupo Mexico -- Mexicano

1 decision. But I think this is a serious issue.

2 MR. HURLEY: Certainly, Your Honor. We're happy  
3 to.

4 With respect to your conversion, there are  
5 equitable remedies associated with conversion, including  
6 disgorgement. And to be clear, a reason that we amended the  
7 complaint to add those extra contractual claims is because  
8 StakeHound actually in an April 12th letter had said that  
9 they view the contract as having been terminated.

10 THE COURT: Well, that's fine, but that doesn't  
11 mean -- it maybe breached, but, you know, you assert breach  
12 of contract claim, among other things.

13 MR. HURLEY: Correct. We're asserting these  
14 claims in the alternative, Your Honor. If it were to be  
15 concluded later in the case that there isn't a contract  
16 governing those claims.

17 THE COURT: Look, I've looked at lots of cases  
18 that deal with availability of a TRO in light of Grupo  
19 Mexicano. I mean, one of the citations I give you is one of  
20 Judge Gerber's opinions in Adelphia, 323 B.R. 345. He's got  
21 a long footnote at Page 360, Note 18. It's a 2005  
22 Bankruptcy Court decision. It's a very lengthy and  
23 scholarly discussion of this issue.

24 There are -- actually, I did not -- and I'll read  
25 the Citigroup -- I didn't find a post Grupo Mexicano Second

1 Circuit decision that clearly addresses this issue. There  
2 are cases in other circuits, the -- bear with me. The Third  
3 Circuit's Owens Corning decision, 419 F.3d 195, 209 (3d Cir.  
4 2005), but it's in the context of a substantive  
5 consolidation. But it's a very lengthy discussion about  
6 Grupo Mexicano.

7 There are -- there are a number of Bankruptcy  
8 Court decisions that say that Group Mexicano doesn't apply  
9 to fraudulent conveyance claims, for example. But I haven't  
10 found any in the search I made that really get close to what  
11 this dispute is about. And I don't -- you know, I will read  
12 the Citigroup decision carefully. But what you've described  
13 so far doesn't sound to me that it somehow found its way  
14 around the Grupo Mexicano decision. There's no question in  
15 my mind that if a complaint contains both legal claims and  
16 equitable claims, Rule 65 permits injunctive relief with  
17 respect to the equitable claims, but not the legal claims.

18 And when you file a supplemental brief, if you say  
19 you're relying on four causes of action -- accounting,  
20 unjust enrichment, conversion, and constructive trust as  
21 supporting the equitable -- the asset freeze that you're  
22 seeking, you'll address that in a brief.

23 I would say this, Mr. Hurley, that simply  
24 including one of those claims, you know, denominating it as  
25 such, is not going -- I have to be satisfied at a minimum

1 that the elements -- the elements of the claim have been  
2 adequately pleaded before, you know, just labeling something  
3 as constructive trust is not going to get you over the  
4 hurdle. Okay?

5 MR. HURLEY: And let me just clarify two things,  
6 Your Honor. I want to apologize. With respect to  
7 Citigroup, I misspoke. I'm not suggesting that Citigroup  
8 gets around Grupo Mexicano. It was actually dealing with  
9 other Supreme Court cases. And I apologize for that. Would  
10 welcome the opportunity, Your Honor, to explain why we think  
11 under the circumstances here Grupo Mexicano is not a bar  
12 with respect to the relief that we're seeking.

13 Certainly with respect to the Grupo Mexicano  
14 issue, that issue is not applicable in our view to the non-  
15 contract claims. We think that we're going to be able to  
16 provide caselaw to Your Honor to satisfy you, we hope, that  
17 the relief is justified with respect to other claims as well  
18 in the circumstances presented here.

19 THE COURT: Let me make it clear that I am not  
20 suggesting that you haven't appropriately stated equitable  
21 claims that would entitle you to injunctive relief. It  
22 hasn't been addressed.

23 MR. HURLEY: I understand, Your Honor. And I'm  
24 only trying to clarify --

25 THE COURT: I have a very open mind about it. I'm

1 just telling -- to make it clear, I'm not pushing back  
2 because I don't think you're entitled to a TRO. I don't  
3 think you've satisfied me based on the briefing in light of  
4 Grupo Mexicano -- you know, the Mareva Injunction issue,  
5 you know, has been a worldwide issue. You know, it could  
6 well be, Mr. Hurley, that an arbitrator in Switzerland could  
7 grant you the relief you're seeking. It even may be that a  
8 state court -- this can't be in state court, but that a  
9 state court in an appropriate can't grant it. It's just  
10 that the federal courts can't.

11 MR. HURLEY: Understood, Your Honor. And I just  
12 want to be crystal clear. We welcome the opportunity to  
13 brief the question. We think that the equitable claims  
14 solve the Grupo Mexicano issue. We may have authority to  
15 cite to Your Honor -- I think we will -- that there is a  
16 broader resolution and that this kind of TRO and injunction  
17 can be granted, including with respect to other claims. We  
18 appreciate the opportunity to do some additional briefing  
19 and really welcome it. I apologize that haven't done it  
20 already.

21 THE COURT: That's fine. That's fine. And I  
22 assume you'll want to do it quickly.

23 MR. HURLEY: Absolutely.

24 THE COURT: And I'm going to give Ms. Wickouski a  
25 chance to respond. I mean, she has this one note Footnote

1 5. And I'm not sure I agree with the text that she has  
2 about it. She may have been able to make a stronger  
3 argument than she did in her brief. Okay. Okay. Go ahead.

4 MR. HURLEY: Okay. So let me proceed to the  
5 question of irreparable harm.

6 So in the Second Circuit, Your Honor, irreparable  
7 harm exists where the defendant is insolvent, on the brink  
8 of insolvency, or in a perilous financial state. Celsius  
9 has offered evidence that in this case, StakeHound is not  
10 just in perilous financial state, but is deeply, deeply  
11 insolvent. The evidence that StakeHound -- that Celsius  
12 offers includes that it provided 96 percent of the assets  
13 that StakeHound ever had to StakeHound. StakeHound  
14 specifically admits that it lost 60 percent of those assets,  
15 which leaves a \$70 million hole in StakeHound's balance  
16 sheet.

17 THE COURT: Look, I must say, when I read your  
18 original complaint, I had understood you to be alleging that  
19 native ETH was an asset of the Debtor, property of the  
20 estate. And I understand cases like Grupo Mexico and many  
21 others. If this was property of the estate and you  
22 demonstrated a high risk of insolvency that it would support  
23 a TRO and preliminary injunction. Okay?

24 But what I read Grupo Mexicano and its progeny as  
25 saying the risk of insolvency -- and this was the whole

1 point of Grupo Mexicano -- it was almost clearly insolvent  
2 and that was the basis for the district court granting  
3 injunctive relief. And what I read the Supreme Court as  
4 saying, that is not a basis for injunctive, equitable  
5 relief. Okay. So I'm not doubting that a high risk of  
6 insolvency. I don't know what -- I'm putting high in front  
7 of it, but I don't think you could just simply assert, you  
8 know, well, we think they're insolvent. You know, Ms.  
9 Wickouski says you haven't demonstrated.

10 I think that her own comments at prior hearings  
11 where she said we need to be able to use this to pay  
12 attorney's fees for this action, for the arbitration,  
13 whatever the -- I don't know what the Israeli action,  
14 whether it was arbitration or a court case. Okay.

15 And what you've suggested about the disparity, you  
16 say you have a \$160 million claim and StakeHound may have  
17 \$90 million in assets. Let's assume you satisfy that  
18 requirement for irreparable harm. Okay. Ms. Wickouski can  
19 argue contrary, but I'm not deciding. But it does seem to  
20 me that you probably have established that element. But the  
21 question for me then is, okay, but what about Grupo  
22 Mexicano? Have you pled the elements of equitable claims  
23 that would entitle you to injunctive relief?

24 When I -- I'm not giving you all the cites. I've  
25 given you Judge Gerber's decision, the Owens Corning



1 decision from the Third Circuit, 419 F.3d 195. There's a  
2 decision by Chris Sontchi, Judge Sontchi, EHT US1. It's  
3 2021 WL 3858556 from August 2021. You know, there are  
4 others.

5 I think here's a Fifth Circuit case, and I can't  
6 find my reference to it now, that -- on -- hang on. Let me  
7 see whether I have it here.

8 I don't seem to have it. I thought I saw a Fifth  
9 Circuit case that found in a fraudulent -- in bankruptcy, in  
10 a fraudulent conveyance claim equitable relief may be  
11 possible as well. But I think you got the drift of what I'm  
12 concerned about.

13 MR. HURLEY: I do, Your Honor. And again, I  
14 suppose at the conclusion of hearing you can tell us exactly  
15 when you would like to have this briefing. But we'll be  
16 prepared to give it to you whenever you need it.

17 THE COURT: Well, you're -- I don't mean this to  
18 be flippant. You and your client are the ones that are at  
19 risk until I decide the matter. So I'm sure Ms. Wickouski  
20 and her colleagues can start doing their work on something  
21 more than just Footnote 5 in the brief that they filed. I'm  
22 going to give her certainly a couple of days after you file  
23 your brief for her to file a response. I'm not -- I don't  
24 want to reply to that. Take your best shot and she can take  
25 her best shot.

1 MR. HURLEY: Certainly, Your Honor. And my  
2 understanding from the last hearing was that Ms. Wickouski  
3 had committed that StakeHound was not going to move assets  
4 until a further order of the Court.

5 THE COURT: Go ahead with your argument.

6 MR. HURLEY: But obviously she can address that.  
7 Okay.

8 So in terms of -- and if Your Honor is satisfied  
9 on insolvency, I can move on, or I can address the questions  
10 about the evidence that we presented in respect of  
11 insolvency.

12 THE COURT: Go ahead.

13 MR. HURLEY: Okay. So as I started to say, we  
14 presented evidence that 96 percent of the assets they ever  
15 had were provided by Celsius, that six percent of those  
16 assets were lost, which leaves this \$70 million hole in the  
17 balance sheet.

18 StakeHound itself has said in its arbitration,  
19 Your Honor, that it had to shut the platform down  
20 specifically because it does not have assets sufficient to  
21 satisfy customer claims. And that is the essence of their  
22 arbitration, is that we don't have enough assets to pay  
23 people anymore, so we had to suspend the platform. That's  
24 their argument.

25 StakeHound, in the Ziotech case which we cite,

1 evidence of insolvency was similar in that it was relied  
2 mostly on statements that had been made -- I shouldn't say  
3 mostly, because we offered other evidence. But it relied in  
4 part on evidence of statements that were made by the  
5 Defendant concerning the risk of bankruptcy the Defendant  
6 was facing. And here, we have a similar situation where  
7 StakeHound has made statements of its own that it's  
8 effectively insolvent, including by indicating that if  
9 Celsius didn't give up its claim to the lost ETH, that  
10 StakeHound may have to into liquidation.

11 The cases that StakeHound cites in opposition we  
12 don't think change anything. So the Scheinman case, which  
13 doesn't involve allegations of insolvency at all. And they  
14 cite the Bay HK case, which is a case in which the movant  
15 actually admitted that its claims could be remedied through  
16 a payment of money damages. And the only evidence that --  
17 sorry, the only suggestion that was made was that it was  
18 "unknown" whether the defendant could pay a judgement once  
19 its entered. We've obviously offered evidence in addition  
20 to that.

21 We think it's absolutely satisfactory,  
22 particularly on a motion for a preliminary injunction that  
23 involves less formal procedures and evidence than a trial.  
24 We cite Your Honor to the Supreme Court Camenisch case from  
25 1981. And I'm quoting, "Given its limited purpose and given

1 the haste that is often necessary, preliminary injunction is  
2 customarily granted on the basis of procedures that are less  
3 formal and evidence that is less complete than a trial on  
4 the merits." And under that standard in particular, we  
5 think that the evidence of insolvency is more than  
6 sufficient to meet that prong provided we can persuade Your  
7 Honor that an injunction is appropriate under those  
8 circumstances.

9 So with that, I would like to move on to likely  
10 success on the merits. And we talked at some length about  
11 the Citigroup case and its reaffirmation of the standard in  
12 the Second Circuit that you either have to demonstrate the  
13 likelihood of success on the merits or sufficiently serious  
14 questions going to the merits to make them a fair ground for  
15 litigation plus a balance of hardships that sits decidedly  
16 in favor of the moving party. We think we can make that  
17 showing on the merits under both standards here, Your Honor.

18 Let me begin with the claim for violation of the  
19 automatic stay. And I won't dwell on it because it mostly  
20 relates to the possibility that potential sanctions could  
21 render StakeHound even more insolvent.

22 THE COURT: Let me just say with respect to the  
23 violation of the automatic stay, I believe I have the  
24 authority -- whether it should be exercised is a different  
25 issue -- but I believe I have the authority to a range of

1 possibilities. I mean, this -- you know, I much earlier in  
2 this case pointed you all to the history in the MF Global  
3 case. You know, I think Ms. Wickouski can argue to the  
4 contrary. I believe the automatic stay was violated. And  
5 it opens up the range or sanctions that I could impose for  
6 violation of the automatic stay.

7 She has made a motion to dismiss for lack of  
8 personal jurisdiction. In order to impose contempt  
9 sanctions, I have to -- the Court must have personal  
10 jurisdiction to be able to do that. She has made a motion.  
11 It will be heard I think the same day that the preliminary  
12 injunction, the motion to dismiss, the motion to compel  
13 arbitration, they'll all be heard together. The Second  
14 Circuit and other circuits have substantial caselaw about  
15 the alternate ways that a trial court can deal with motions  
16 to dismiss for lack of personal jurisdiction. You know,  
17 when we get to the -- that -- I mean, I'll decide now what  
18 relief if any I should impose for violating the automatic  
19 stay. Okay. So I think that part of it -- I'm sure it's of  
20 great concern to Ms. Wickouski and her client, but I have  
21 less problem. I've made multiple comments during the course  
22 of this case about that. I think I view her motion to  
23 dismiss for lack of personal jurisdiction as her effort at a  
24 defense to the violation of the automatic stay.

25 Go on with your argument if you need to. But go

1 ahead.

2 MR. HURLEY: Thank you, Your Honor. I will move  
3 now to the claims with respect to the coins.

4 So with respect to the MATIC and the DOT to begin.  
5 So let me back up. There's MATIC and the DOT and there's  
6 the 25,000 November staked ETH. All of those tokens are  
7 available for transfer right now.

8 THE COURT: You say that I'm holding you hostage,  
9 holding your client hostage by not returning.

10 MR. HURLEY: We made that comment in particular  
11 with the MATIC and the DOT, Your Honor. And we did because  
12 MATIC and the DOT, unlike with the ETH where there was an  
13 excuse, one that we think borders on the frivolous, but an  
14 excuse provided for why they are withholding the ETH,  
15 they've never even tried to provide an excuse for  
16 withholding the MATIC and the DOT, which is worth  
17 approximately \$40 million.

18 So the MATIC and the DOT, on May 25th, we demanded  
19 its return. And the agreements very clearly require  
20 StakeHound to return MATIC and DOT in exchange for MATIC and  
21 ST-DOT. We tendered our ST-MATIC and ST-DOT. They didn't  
22 do it.

23 Like I said, they don't really offer any kind of  
24 excuse. I mean, I guess conceivably they're going to say,  
25 well, the platform is suspended. They suspended the

1 platform I guess actually more than two years ago.

2 First of all, they've never suggested that there's  
3 any reason the platform needs to stay suspended with respect  
4 to the MATIC and the DOT. They don't claim that they don't  
5 have adequate MATIC and DOT to satisfy our claim. For  
6 example --

7 THE COURT: Have they asserted that any other  
8 parties have a claim to those same MATIC and DOT?

9 MR. HURLEY: No. They have made really -- they've  
10 provided no contention of any kind to justify what they're  
11 doing. They're just holding it.

12 With respect to the platform being suspended,  
13 there is -- even if they said they had a right to do it in  
14 the first place, it's not -- it's a -- the suspension has to  
15 be temporary and it has to be consistent with the duty of  
16 good faith and fair dealing under whether it's U.S. law or  
17 Swiss law that applies. And just simply holding on to our  
18 MATIC and DOT with no excuse is we submit a very clear  
19 violation of those principles and that we have an  
20 overwhelming likelihood of success or prevailing on the  
21 claims with respect to the MATIC and the DOT.

22 THE COURT: So let me just -- I'll actually read  
23 you from -- I've already cited Judge Gerber's Footnote 18 in  
24 his Adelphia opinion, 323 B.R. 345 at 360, Note 18. It's a  
25 very lengthy footnote. Okay.

1           And he says, "Grupo Mexicano was a case in which  
2       equitable claims had not been presented and an asset-  
3       freezing injunction was sought solely to protect a future  
4       money judgement." Here, Adelphia made substantiated claims  
5       of ownership of much of the Rigas' property and sought the  
6       equitable relief of imposition of a constructive trust and  
7       recovery of fraudulent conveyances.

8           "Since Grupo Mexicano was decided, lower courts  
9       have considered whether Grupo Mexicano bars asset-freezing  
10      injunctions under Federal Rule of Civil Procedure 64 or 65  
11      where equitable claims have been presented. Those courts  
12      have repeatedly and uniformly to date held that Grupo  
13      Mexicano is inapplicable to request for asset-freezing  
14      injunctions where plaintiffs seeking that relief have also  
15      made equitable claims."

16           He actually -- he cites a Second Circuit case, CSC  
17      Holdings Inc. v. Redisi, 309 F.3d 988, 996 (7th Cir. 2002).  
18      And he has a parenthetical that says -- this is a  
19      parenthetical from the CSC Holdings case. It says, Grupo  
20      Mexicano "Held that a district court may not issue an  
21      injunction freezing assets in an action for money damages  
22      where no equitable interest is claimed."

23           And then it goes on in the footnote where in the  
24      parenthetical where equitable relief for an accounting and  
25      resulting profit was sought in the alternative to claims for



1 money damages, Grupo Mexicano was inapplicable and asset-  
2 freezing injunctions were proper. So that's a cite to that  
3 case.

4 And then he cites a Fourth Circuit case, the  
5 Rahmen case, 198 F.3d 489, 496-497 (4th Cir. 1999). And the  
6 gist of it, he says when the plaintiff-creditor asserts a  
7 cognizable claim to specific assets of the defendant or  
8 seeks a remedy involving those assets, the Court may in the  
9 interim invoke equity to preserve the status quo pending  
10 judgement. And it goes on. You'll read these cases. Judge  
11 Gerber, as was his wont, the footnote goes on very lengthy.  
12 It's very scholarly.

13 So I understand your argument as to the MATIC and  
14 DOT. You say the Debtor has got an interest in it, and you  
15 want relief.

16 MR. HURLEY: Your Honor, thank you for those  
17 cites. We have a cite from the Dong case out of the  
18 Southern District that I think addressed this question as  
19 well. And I will provide that specific cite to you. Hold  
20 on a second.

21 THE COURT: Don't give it to me now. Put it in a  
22 brief. Okay?

23 MR. HURLEY: Okay. But basically holds that Grupo  
24 Mexicano did not overrule the long-standing rule here that -  
25 - where non-movants assets may be dissipated before final

1 relief can be granted and where the non-movant -- right.

2 THE COURT: If the Plaintiff claims an interest in  
3 those assets, yes, equitable relief is possible.

4 MR. HURLEY: So like I said, we submit -- we  
5 welcome the opportunity to submit further briefing and  
6 demonstrate we think the rule applies -- or sorry, that  
7 Grupo Mexicano does part of the relief here. But we  
8 understand you'll look for that in a further submission.

9 Regarding the question of success on the merits  
10 with respect to the stake services agreement and the  
11 November -- the 25,000 November ETH. So again, I want to  
12 reiterate that there is a contention by the other side in  
13 this case that the contract is at an end as of April 12th.  
14 Now, not suggesting that we necessarily agree with that or  
15 what the precise ramifications for that would be. But that  
16 is one of the reasons that we added the claims for equitable  
17 relief, because there is a contention in the case that the  
18 staking services agreement no longer applies.

19 With respect to that ETH, so there's no doubt that  
20 in their dispute that StakeHound provided the ETH and has  
21 demanded its return. The staking services agreement is  
22 attached to the Mann Declaration. It's Exhibit B to the  
23 Mann Declaration. And Section 1.4 of the agreement provides  
24 specifically that while the ETH won't be available until the  
25 upgrade happens, that -- which is defined in the agreement

1 as the termination date, Section 1.5 goes on to require  
2 StakeHound to transfer the November ETH, the 25,000 of stuff  
3 that they didn't lose, to a separate wallet and do it on the  
4 termination date.

5 And Section 1.8 -- and I should back up and say in  
6 the April 12th letter that we got from StakeHound, they  
7 claim that they in fact had undertaken that transfer.

8 Section 1.8 provides that following the successful  
9 transfer of the November ETH, Celsius shall be entitled to  
10 exchange upon availability its ST-ETH against ETH through  
11 StakeHound's platform.

12 StakeHound agreed that it would provide StakeHound  
13 native ETH on a one-to-one basis with ST-ETH. We tendered  
14 our ST-ETH. They didn't do it.

15 THE COURT: So are you asserting -- let me -- are  
16 you asserting that those writings from StakeHound give  
17 Celsius a claim to the specific assets for which you're  
18 seeking equitable relief?

19 MR. HURLEY: We do.

20 THE COURT: Okay. You'll make that point clearly  
21 in your brief.

22 MR. HURLEY: We will.

23 THE COURT: Okay. So with respect to the assets -  
24 - sorry, with respect to the claim, the response that has  
25 been provided by StakeHound we submit is not sustainable and

1 really borders on the frivolous. They give two responses.  
2 One is they say, well, you can only get your ETH back if you  
3 do it through the platform. But since we suspended the  
4 platform, you cannot get your ETH back. We submit that's  
5 inconsistent with the contract itself, which provides that  
6 you can only suspend the platform temporarily even if you do  
7 it. And under Swiss law as well as U.S. law, a right of  
8 that kind has to be exercised in good faith and it would be  
9 absolutely inconsistent with the duty of good faith to allow  
10 them to say we lost your eth, therefore we had to suspend  
11 the platform. And because this platform is suspended, you  
12 can't get back the ETH that we didn't lose.

13 THE COURT: I think -- and Ms. Wickouski can  
14 address this as well. If you believe that the contract or  
15 the subsequent writings from StakeHound establishes Celsius'  
16 right in property, then I'm sure when you look through these  
17 cases, you'll find many cases that say where the plaintiff  
18 is seeking to recover property in which it has an interest,  
19 that that can provide a basis for injunctive relief,  
20 equitable relief, even if they also have legal claims.

21 But I want to see that -- I mean, I'm not  
22 criticizing either party for the briefs they filed, but I  
23 have lots of questions, and you're going to answer them.

24 MR. HURLEY: Understood, Your Honor. And we look  
25 forward to the opportunity to do that. And we believe that

1 kind of property interest exists here and look forward to  
2 demonstrating that.

3 The other response that StakeHound makes in terms  
4 of explaining why they haven't returned the ETH that they  
5 didn't lose is they claim now, in a manner that is  
6 inconsistent with the words of the contract and the words of  
7 the parties over time that rather than being required to  
8 return ETH over on a one-to-one basis, one ETH for one ST-  
9 ETH, they now claim, again, for the first time in their  
10 arbitration -- that's the first time we saw this in their  
11 arbitration -- they said that in fact they are only required  
12 to provide as much native ETH as is necessary to equal the  
13 Fiat value of ST-ETH --

14 THE COURT: Yeah, I --

15 MR. HURLEY: -- (indiscernible) the \$50 million.  
16 That is their position in the arbitration. We don't think  
17 either one of those defenses is remotely plausible and that  
18 Celsius has an overwhelming probability of succeeding on the  
19 merits of the case if this case proceeds.

20 THE COURT: You know, I think I made a comment at  
21 the last hearing, and you may or may not agree with it. But  
22 I think I put this in one of the orders I entered. If Ms.  
23 Wickouski prevails on the motion to compel arbitration, it  
24 may well be -- I'm not saying for sure, but it may well be  
25 that the equitable relief that I would order would remain in

1 place until an arbitrator can decide whether as  
2 precautionary measures it could impose whatever relief it  
3 believes is appropriate if the matter is arbitrable.

4 I can't remember now -- I've had this issue come  
5 up years ago. And, you know, that may be an issue for  
6 another day, but we'll see.

7 MR. HURLEY: Okay. Understood, Your Honor.

8 THE COURT: And your arbitrator probably isn't  
9 going to be bound -- won't be bound by Grupo Mexicano.

10 MR. HURLEY: Thank you, Your Honor. We obviously  
11 agree that Your Honor has that authority.

12 So based on what we just described, we think that  
13 Celsius' likelihood of success is overwhelming. We also  
14 note under Citigroup that if we can also show that the  
15 balance of harms weighs very strongly in favor of Celsius  
16 that we don't even have to show likelihood of success. We  
17 can rest on significant questions --

18 THE COURT: You know, look. I've applied that  
19 injunction standard multiple times before. It's an  
20 alternative standard. Okay? And I agree that's the  
21 standard. That's not what was hanging me up.

22 MR. HURLEY: I understand. So let me turn to the  
23 balance of harms. Because we do believe that the balance of  
24 harms weigh overwhelmingly in Celsius' favor in this case.

25 Let me first talk about the harm to Celsius. And

1 again, today we are only asking for relief that would endure  
2 for about four weeks. Your Honor will have a chance to  
3 revisit with any questions related to what's going to happen  
4 going forward on September 27th.

5 So with respect to Celsius, any harm that it would  
6 suffer by assets that are the subject assets being spent in  
7 the next four weeks is permanent. Celsius has offered  
8 evidence that StakeHound has only \$90 million of assets and  
9 a \$160 million claim. It's already not going to get full  
10 satisfaction of any judgement it gets in the case. And  
11 every dollar that gets spent between now and September 27th  
12 is another dollar that can't be recovered by Celsius for the  
13 benefit of its creditors. Again, that's likely permanent  
14 harm.

15 Turning to the harm that would be to StakeHound in  
16 the event the TRO was granted. So first, StakeHound says  
17 that it has some operational needs. The Castellana  
18 Declaration includes a paragraph where he says that he needs  
19 \$80,000 a month. He doesn't detail why he needs \$80,000 a  
20 month. He includes some categories, but he doesn't break it  
21 down amongst them. So, for example, one of the things he  
22 says he needs money for is to pay the contract rate to  
23 operate the notes without applying discounts or rebates to  
24 that rate. He doesn't identify what the contract rate is.  
25 He doesn't identify what it would be after the discounts and

1 rebates are applied. Our information is that order of  
2 magnitude-wise supporting those notes is more on the order  
3 of \$10,000 per year.

4 He also says there are some salaries that need to  
5 be paid. He doesn't say who, he doesn't say why, he doesn't  
6 say what. And he says that their ordinary business expenses  
7 need to be paid. We're not sure what those would be  
8 considering that StakeHound appears to basically be  
9 collecting rewards and doing nothing more than that.

10 But notwithstanding that, this is exactly the kind  
11 of expense concern that is addressed by the release valve in  
12 our TRO. So if there is a payment that needs to be made in  
13 the near term, they can come to us and say, hey, to preserve  
14 the assets, really need to pay it in a week.

15 THE COURT: Mr. Hurley, I don't want to have one  
16 or more hearings a week before a preliminary injunction  
17 hearing to deal with, yeah, StakeHound needs another X  
18 dollars to do this. If I was going to have a carveout  
19 pending the preliminary injunction hearing, it would be a  
20 dollar amount. I just am not going to put myself in the  
21 position where I'm micromanaging every dollar of expense  
22 that StakeHound has between now and the end of September.

23 MR. HURLEY: Understood, Your Honor. With respect  
24 to actual operating expenses, it appears that even by their  
25 own sort of -- what they're saying they need, it's a



1 comparatively small amount.

2 Now, with respect to legal fees. They have  
3 indicated that they want to spend very substantial sums on  
4 legal fees in the next four weeks. Again, if StakeHound is  
5 permitted to spend funds on legal fees in the next four  
6 weeks, those are funds that can never come back and are lost  
7 dollar-for-dollar from any judgement.

8 The harm to StakeHound on the other hand is not  
9 permanent. It may be that on September 27th Your Honor  
10 decides that there should be a carveout and that there  
11 should be a carveout that encompasses legal fees. If that  
12 happens, Your Honor determines that, then all you will have  
13 had is a delay of a few week. A delay of a few weeks for  
14 payment of services since the time that they are rendered  
15 for lawyers and law firms is extremely common. In fact, it  
16 can be much, much longer than a few weeks in ordinary  
17 practice.

18 Now, if Your Honor on September 27th concludes  
19 that a carveout is not appropriate, then the fact that they  
20 didn't get one now is not an injustice because they weren't  
21 entitled to one in the first place.

22 StakeHound suggests that if they don't have this  
23 carveout to be able to pay their fees in the next four  
24 weeks, that it's going to impede their ability to hire  
25 counsel. But the evidence shows just the opposite.

1 StakeHound has been laboring from the very beginning of this  
2 case under the possibility that a freezing order would be  
3 entered, that a freezing order would prevent them from using  
4 the subject assets to pay legal fees. It has not prevented  
5 them from mounting a vigorous defense to virtually every  
6 step that Celsius has taken in this case. There is no  
7 suggestion that if the TRO was entered, that StakeHound's  
8 counsel is going to resign in the next four weeks, or that  
9 it even could, frankly.

10 This is like the MarketXT case where in MarketXT,  
11 the defendant had come forward and said I want relief to be  
12 able to pay outstanding fees for my lawyers and it's going  
13 to impede my defense if I don't. And the court noted, well,  
14 your lawyers have been frozen for months, and yet they have  
15 continued to litigate. It has not impeded your ability to  
16 mount a defense. Same thing is true here, Your Honor. It  
17 clearly has not impeded their ability to mount a defense.

18 I just want to say finally I guess Your Honor here  
19 in terms of that question in particular, what Celsius would  
20 like to do and has been focused on from the beginning really  
21 here is, is there a way to bring the parties together and  
22 make some kind of a deal. And we would submit that if  
23 StakeHound is provided with effectively a war chest for the  
24 next four weeks, that war chest is going to get used.  
25 Because it's money that comes from a \$90 million group of

1 assets that's subject to claims of \$160 million from  
2 Celsius. It just stands to reason there's not going to be  
3 much incentive for them to do anything other than continue  
4 to litigate with extreme vigor. I'm not saying they won't  
5 do it anyway. Obviously, as I just said, (indiscernible)  
6 vigorously already.

7 But for there to be a chance for parties to make  
8 some kind of an agreement, everybody's got to have an  
9 incentive. And under the circumstances here, if there is a  
10 possibility that StakeHound could continue to use these  
11 assets, that we at least contend are assets that are going  
12 to be subject to a very substantial claim, that incentive  
13 isn't going to be there. And that's really the way we would  
14 like to see things move forward.

15 And then just a final point, Your Honor. It  
16 relates to the arbitration.

17 THE COURT: What do you understand the value of  
18 the MATIC and DOT to be?

19 MR. HURLEY: It changes every day, Your Honor.  
20 But recent prices, it was around \$40 million.

21 THE COURT: Okay. Go ahead.

22 MR. HURLEY: Okay. So with respect to the  
23 arbitration, there's just one final point. I think it's  
24 almost in the nature of housekeeping. As we provided in our  
25 August 21st letter to Your Honor, an email that we received

1 from the arbitrator on August 18th. And that hasn't been  
2 responded to yet. The arbitrator asked -- so after the  
3 hearings in front of Your Honor, we sent a joint letter to  
4 the arbitrator on August 11th. And it was on my letterhead  
5 and I copied counsel for StakeHound. And in the August 18th  
6 letter, the arbitrator wrote back and said first of all,  
7 StakeHound, please just confirm that you agree with Mr.  
8 Hurley's letter, that it's effectively legitimate. And then  
9 a question about whether or not this is -- what's going on  
10 is a suspension. And there hasn't been a response yet to  
11 that letter.

12 And the TRO that we're asking Your Honor to enter,  
13 it would require a response that we think is appropriate  
14 under the circumstances, basically everybody saying yes, we  
15 understand the letter from Mr. Hurley, we agree with, and  
16 we're looking for a suspension until further notice.

17 THE COURT: Would you agree that an order entered  
18 by the court that orders the parties to suspend all activity  
19 in connection with the arbitration pending further order of  
20 the court, would that solve your problem on this?

21 MR. HURLEY: I believe it would, Your Honor. And  
22 yeah, I believe it would. My hope would be that in addition  
23 to that, StakeHound would also respond and just say, you  
24 know, we authorize the letter. But yes --

25 THE COURT: They don't need to authorize my order

1 if I enter an order.

2 MR. HURLEY: Correct.

3 THE COURT: They can violate an order at their own  
4 risk.

5 MR. HURLEY: Entry of an order would certainly  
6 satisfy our concerns.

7 So, Your Honor, that's all I have for now.  
8 Obviously you've asked for some additional briefing and we  
9 will get right on it. But other than that, unless Your  
10 Honor has other questions, I will yield the podium.

11 THE COURT: How much time do you want for a brief?  
12 Your minions are not going to be happy with your answer. I  
13 don't mean to disparage them. It's a great team you have.

14 MR. HURLEY: Thank you. I agree. Can I speak  
15 with them offline?

16 THE COURT: Yes, you can.

17 MR. HURLEY: I think it's a matter of a day or  
18 two.

19 THE COURT: Okay. Speak to them. I've given you  
20 a bunch of lead-ins of citations.

21 MR. HURLEY: Very much so, Your Honor. We  
22 appreciate that. And we'll address those.

23 THE COURT: Ms. Wickouski, go ahead.

24 MS. WICKOUSKI: Thank you, Your Honor. For the  
25 record, Stephanie Wickouski, Locke Lord, on behalf of

1 StakeHound.

2 Your Honor, I think Mr. Hurley has been speaking  
3 for about an hour here, and there's a lot to unpack. So if  
4 Your Honor would bear with me.

5 THE COURT: I will.

6 MS. WICKOUSKI: I would like to address points  
7 maybe not in any particular order. And I would like to  
8 start out, and I want to come back to this. But with the  
9 last point that Mr. Hurley made. And Celsius wants the  
10 Court to prevent my client from spending a dime to preserve  
11 its own assets or pay its legal fees.

12 THE COURT: Actually, the last point he made was  
13 about a letter to the arbitrator. And that was the last  
14 point he made.

15 MS. WICKOUSKI: You're correct, Your Honor. And  
16 forgive me if I glossed over that as perhaps being non-  
17 substantive. Our client's Swiss counsel has been ready to  
18 reply to the letter to confirm our agreement to it and  
19 actually had held off pending the outcome of this hearing  
20 because Celsius has asked for specific language. It would  
21 be our preference that we respond and confirm that the Swiss  
22 counsel confirmed --

23 THE COURT: This is you I'm going to deal with  
24 right now.

25 Mr. Hurley, draft a proposed order. Share it with

1 Ms. Wickouski. If you can't get an agreed form of order by  
2 tomorrow, each of you can submit to me separate ones. I  
3 thought this issue, Ms. Wickouski, was going to be put to  
4 bed long before today. It hasn't. So I'm not going to get  
5 into whether your Swiss counsel thinks that one form of  
6 language is better than another. I am going to enter an  
7 order directing that the parties cease all activity pending  
8 further -- in the arbitration pending further order of the  
9 court. If you violate it, Mr. Hurley will be back for  
10 contempt. Okay?

11 MS. WICKOUSKI: I understand, Your Honor. We --

12 THE COURT: No, stop. Stop. I don't want to hear  
13 that Swiss counsel was waiting to hear what happened today.  
14 This should have been resolved. It's resolved now. I will  
15 get either an agreed form of order or separate forms of  
16 order tomorrow. And by tomorrow at noon an order will be  
17 entered on that. And, Mr. Hurley, you can forward a copy to  
18 the arbitrator or not. But that's not a complicated issue.

19 MS. WICKOUSKI: Thank you, Your Honor. And just  
20 to be clear, the reason we were waiting was because if Your  
21 Honor agreed with the form of letter that Mr. Hurley had  
22 proposed --

23 THE COURT: Ms. Wickouski, we are beyond that.  
24 Either I'll get an agreed form of order or I'll get your two  
25 orders. One will be entered by the end of the day tomorrow.

1 So I want either an agreed form of order by noon tomorrow or  
2 separate forms of order. And by the end of the day, there  
3 will be an order entered. We're not going to -- there isn't  
4 going to be any further negotiation. Swiss counsel is not  
5 going to be involved. This is a violation of the automatic  
6 stay.

7 And at the end of the day I'll tell both of you I  
8 still think that, you know, you probably are both going to  
9 be better off having this arbitrated. It's Swiss law that  
10 governs. But that's not for today's issue. Okay? But for  
11 today's issue, I'm just telling you the Court is going to  
12 enter an order. You can either have an agreed form or  
13 submit your separate forms and one will be entered by the  
14 end of the day tomorrow.

15 Go on with your argument.

16 MS. WICKOUSKI: Thank you, Your Honor. Let me  
17 talk about the elephant in the room, which is that this is a  
18 TRO hearing. And I realize that the standard is loser and  
19 not as high as a preliminary injunction or an actual trial.  
20 But the elephant in the room is that we have, even though  
21 our client did not have the burden, we have submitted  
22 evidence, we have submitted a declaration, and we have a  
23 witness available for cross-examination. None of that is  
24 true with respect to the Plaintiff.

25 THE COURT: Let me be clear that I understand the



1 law on TROs. I do not have to hear witnesses testify. I  
2 can do it solely on the papers.

3 MS. WICKOUSKI: I understand.

4 THE COURT: So we're not hearing witnesses today.

5 MS. WICKOUSKI: And, Your Honor, with respect to  
6 the declarations the Plaintiff has submitted, we have  
7 objections to them. And we would like to be able to present  
8 those objections.

9 But getting right to the point, even under -- and  
10 Mr. Hurley has made a lot of arguments that this fact hasn't  
11 been contested or this statement is admitted  
12 (indiscernible). Perhaps he hasn't read our papers. We  
13 have submitted both the agreements applicable and the  
14 statement of Mr. Castellana concerning the negotiation of  
15 those agreements as well as, fast-forward to the present,  
16 the present need to pay operating expenses and to pay legal  
17 counsel and the uses of that. And he would certainly be  
18 able to provide more detail to respond to a number of things  
19 that Mr. Hurley said, which are not in evidence.

20 And before I leave this point, while I understand  
21 the appeal of cutting off the other side's right to pay  
22 their counsel or ability to pay their counsel, this is not  
23 an appropriate tactic for a plaintiff to engage the court  
24 in. And particularly here where the evidence of record, and  
25 really the only evidence of record, indicates that the

1 assets that are at issue are not property of the estate. I  
2 think even --

3 THE COURT: Is that true as to the MATIC and the  
4 DOT? Because I will -- because it certainly sounds to me  
5 that the Debtor has a property interest in the MATIC and the  
6 DOT. Put aside the staked ETH. But as to MATIC and DOT,  
7 Mr. Hurley, I will look at the supplemental brief, but it  
8 certainly sounds that as to the MATIC and DOT, they do have  
9 a property interest.

10 MS. WICKOUSKI: Well, Your Honor, we disagree with  
11 that. We think this is covered by the terms and conditions  
12 and the revenue sharing agreement.

13 But I think that it's probably not an issue that  
14 the Court necessarily needs to address at the TRO because we  
15 have proposed that we would abide by a freezing arrangement  
16 subject to an appropriate carveout. And so I think even Mr.  
17 Hurley said that the MATIC and DOT in their estimation is  
18 \$40 million, but he says that the assets of our client is  
19 \$90 million. I am not conceding those figures. But I think  
20 that the expenses that have been proposed that are necessary  
21 in Mr. Castellana's affidavit are far, far less from even  
22 touching the level of \$40 million. I think we're talking  
23 about \$2 million and the need for that.

24 I think particularly -- I mean, I'm not conceding  
25 that there's been a showing for a TRO here because the

1 evidence that's been presented such as it is by the  
2 Plaintiff are four declarations. Three are declarations of  
3 counsel and one is a witness who does not have personal  
4 knowledge. What we have submitted is a witness with direct  
5 personal knowledge as well as the agreements that clearly  
6 state that these assets are not property of Celsius. And I  
7 think --

8 THE COURT: As to the MATIC and DOT?

9 MS. WICKOUSKI: Mr. Castellana is here, but our  
10 view is that those assets were transferred as well. I  
11 realize that there has been an issue raised there, and we're  
12 not proposing today that -- you know, I think what we would  
13 be willing to agree to as an interim continuation of the  
14 freeze order wouldn't affect the MATIC or DOT.

15 THE COURT: Go ahead with your argument.

16 MS. WICKOUSKI: I point to one thing that -- and  
17 there have certainly been a lot of statements that have been  
18 made this morning, but there's one comment that was made by  
19 Mr. Hurley where he points to correspondence indicating --  
20 and I think this was an email attached to the declaration  
21 that we want to object to -- about a one-to-one exchange.  
22 And if you read lines back to his comments, when I heard  
23 that, it sounded like a contract dispute, a breach of  
24 contract dispute. An exchange suggests that what is being  
25 exchanged from one party to the other is not the property of

1 solely one party. Because why would there be an exchange if  
2 what Plaintiff was trying to exchange for was their property  
3 in the first instance? It also suggests that they have to  
4 provide something in order to exchange. And that really  
5 belies their theory that this is their property.

6 So, I mean, I could go back to -- again, we've  
7 been listening to this for an hour. There are a number of  
8 statements --

9 THE COURT: I haven't been listening quite an hour  
10 because of technical problems I had. But close to it.

11 MS. WICKOUSKI: Yes. Thank you. Thank you, Your  
12 Honor.

13 So I think on the -- this is a TRO. And putting  
14 aside whether a freezing order is even appropriate where  
15 it's primarily or entirely a breach of contract claim, I  
16 know that the Plaintiff's position is that these are  
17 actually equitable claims. But their equitable claims in  
18 their amended complaint all emanate from the position and  
19 the view that these are their assets. And we have this in  
20 the face of a contract that says clearly the contrary.

21 So I think it's not a question of do they have to  
22 show likelihood of success --

23 THE COURT: May I ask --

24 MS. WICKOUSKI: Yes.

25 THE COURT: You argue that they have failed -- in

1 the amended complaint that they have failed to properly  
2 allege equitable claims? Because, look, Ms. Wickouski, if  
3 you disagree, you'll get a chance to put this in a brief.  
4 But the way I read the law is that if a Plaintiff can  
5 properly assert both legal and equitable claims, equitable  
6 relief with respect to the equitable claims is available.  
7 They have to satisfy the -- I'm not saying it's automatic at  
8 all. They have to satisfy the high burden. But it's not  
9 uncommon for courts to get complaints that allege both legal  
10 and equitable claims. So certainly if you -- when you file  
11 -- if you were going to file another brief, if you want to  
12 address why you don't believe the amended complaint properly  
13 asserts equitable claims, you can do that.

14 I'm not -- making it crystal clear. I'm a long  
15 way from deciding that they've properly alleged equitable  
16 claims that would support a TRO and preliminary injunction.  
17 I'm not.

18 MS. WICKOUSKI: Well, that is -- and maybe I said  
19 it unartfully. But precisely what I'm saying is that they  
20 haven't properly pled equitable claims or actually they  
21 haven't provided any evidence in support of even a colorable  
22 claim that would be sufficient for the basis to enter a TRO.

23 And I realize that maybe they're not required to  
24 under the timeframe to bring in witnesses, but they're  
25 required to make some sort of showing.

1           And I get back to the fact that there's four --  
2           that we have a witness with actual knowledge, and we  
3           submitted contracts. They have submitted four declarations.  
4           Three of them are from counsel. Two of them are from Swiss  
5           counsel. And I find that really ironic given that one of  
6           the things we're fighting about, and we're even righting  
7           about whether we should be fighting about it, is whether the  
8           Plaintiff should be compelled to go to Switzerland, but yet  
9           two declarations from Swiss counsel.

10           And then declaration with respect from the U.S.  
11           counsel --

12           THE COURT: The contract is governed by Swiss law.  
13           So I don't know why you think it's so unusual that we have a  
14           declaration from Swiss counsel.

15           MS. WICKOUSKI: And it is indeed governed by Swiss  
16           law, which precisely gets to our issue of arbitrability.

17           But with respect to the one declaration that is  
18           not from counsel, it is from a witness that does not have  
19           personal knowledge and was not even at Celsius at the time  
20           that these transactions were negotiated. And there's a lot  
21           of commentary I think in the first declaration of Mr. Desser  
22           about how the intent of the parties is relevant under Swiss  
23           law.

24           And so I think that this all goes to has the  
25           Plaintiff made a sufficient showing of an issue -- I'm not

1 even going to say likelihood of success on the merits.  
2 That's what I believe. But I know that parties can disagree  
3 as to how high that standard is and whether it's applicable  
4 or whether there's a lower standard of an issue that gives  
5 rise to an issue under the merits. I don't think even the  
6 lowest standard has been met with respect to the merits.  
7 And I would say, again, elephant in the room is what is the  
8 competent evidence that's before the court. At the last  
9 hearing, Your Honor, I think you exhorted Mr. Hurley to come  
10 in last week at a TRO hearing with competent evidence. We  
11 would submit that that has not been met, and I realize this  
12 is TRO, but most of what we've heard today is the statements  
13 of counsel.

14 And not to sound like a broken record, Your Honor,  
15 but Mr. Hurley doesn't get to testify. And it's ironic that  
16 I've said that now, I think, at every hearing and what did  
17 we see, a declaration from Mr. Hurley. There needs to be  
18 competent testimony submitted by a witness with actual  
19 knowledge and direct knowledge, particularly when what is at  
20 issue is whose property is this and we have agreements that  
21 govern specifically that question.

22 And, Your Honor, I would only ask that if the  
23 court is going to consider the admission of the declaration  
24 submitted by plaintiff, that we have the opportunity to  
25 object and cross-examine those witnesses. I don't think --

1 THE COURT: There isn't going to be any cross-  
2 examination for a TRO. I've made clear that if we get to  
3 the preliminary injunction hearing, all witnesses are  
4 subject to cross-examination, and the two of you need to  
5 confer about whether they appear by Zoom or in person.  
6 You'll work that out. That's crystal clear. If we get to a  
7 preliminary injunction hearing, there will be live testimony  
8 subject to cross-examination.

9 MS. WICKOUSKI: Yes, Your Honor. So I would ask  
10 that we offer into evidence Mr. Castellana's declaration and  
11 exhibits.

12 THE COURT: Mr. Hurley?

13 MR. HURLEY: We don't object to Your Honor  
14 considering the declaration. I mean, our understanding from  
15 the prior hearing was that this is a non-evidentiary  
16 hearing.

17 THE COURT: Well, it's an evidentiary hearing in  
18 the sense that -- I'm not having cross-examination, clear.  
19 But a TRO has to be supported by competent evidence, and the  
20 opposition has to be supported by competent evidence. It  
21 may be subject to cross-examination at a preliminary  
22 injunction. But so I take you to be saying you're not  
23 objecting for purposes of the TRO hearing to the court  
24 admitting in evidence the Castellana declaration and  
25 exhibits. Is that correct?



1 MR. HURLEY: Let me back up, Your Honor, I guess,  
2 because my understanding was that both sides' declarations  
3 were going to be admitted for what they're worth, and Your  
4 Honor will make a decision about their value. And to the  
5 extent that's the case that we certainly think that all of  
6 the declarations should be considered by Your Honor on  
7 exactly --

8 THE COURT: But right now, I'm asking about  
9 Castellana declaration and exhibits. If you want to -- if  
10 you believe you have a proper objection, go ahead and assert  
11 it, and I'll rule on it. On a TRO on notice, which this one  
12 was, the defendant certainly can oppose the TRO, offer  
13 evidence which it believes should be considered by the court  
14 and Ms. Wickouski has done that.

15 MR. HURLEY: So Your Honor --

16 THE COURT: We're not going to trade off, Mr.  
17 Hurley. You're either -- do you object to the court  
18 admitting into evidence for purposes of a TRO hearing  
19 without cross-examination today the Castellana declaration  
20 and exhibits? It's a yes or a no.

21 MR. HURLEY: The Castellana declaration includes  
22 substantial statements that would not be admissible at a  
23 trial. If that's the standard, then we object.

24 THE COURT: Okay. All right. I note your  
25 objection. I'm not ruling on it now. Go ahead. Go ahead,

1 Ms. Wickouski.

2 MS. WICKOUSKI: Thank you, Your Honor. There's  
3 just one more point that was made in the papers that I do  
4 want to address, which is the risk of dissipation and the  
5 balance of the harms. Counsel stated that on the balance of  
6 the harms, the damage to Celsius is permanent, but not clear  
7 what that damage is. The damage to StakeHound, on the other  
8 hand, is permanent or at least more permanent because the  
9 impact of freezing all of their access to funds and  
10 precluding them from paying operating expenses which are  
11 needed to maintain the equipment, to maintain the tokens, as  
12 well as not being able to pay their lawyers to pursue a very  
13 valuable claim as well as not be able to pay its lawyers to  
14 defend claims that their assets are their assets, it seems  
15 that the balance of the harms obviously favors our client.

16 And not to beat the drum about this, but while I  
17 understand the appeal of not wanting your opponent to be  
18 able to pay their counsel, that is not a proper tactic to  
19 involve the court in. And besides, the amounts here that  
20 Mr. Castellana in his affidavit have stated that are  
21 necessary over this time period, given the extent of the  
22 litigation, and this is not just the U.S. litigation, but  
23 Israel, which is an affirmative case, really pale in  
24 comparison to the resources that are being expended on the  
25 other side.

1           So I find the idea that we come back to the court  
2       every time we want to pay a bill to be a waste of the  
3       court's resources, but also really disproportionate under  
4       the circumstances.

5           THE COURT: May I ask you this question? Mr.  
6       Hurley said that his statement of belief that StakeHound has  
7       assets of approximately \$90 million. Do you agree with  
8       that?

9           MS. WICKOUSKI: May I have a moment?

10          THE COURT: Yes, go ahead.

11          MS. WICKOUSKI: Your Honor, unfortunately I don't  
12       know the answer to that question. I don't have a detail on  
13       that. I do have the principal of our client here that we  
14       could ask or certainly allow -- make him available for the  
15       court's question in that regard.

16          THE COURT: I don't intend to take testimony  
17       today. I was asking you whether you agree. If you're not  
18       in a position to respond to it, that's fine too. It was a  
19       statement, not evidence, that Mr. Hurley made that  
20       StakeHound has approximately \$90 million in assets, and I  
21       just wanted to see if you had a response to that.

22          MS. WICKOUSKI: Yes, and unfortunately, Your  
23       Honor, I don't. I want to give the correct answer, and I  
24       don't.

25          THE COURT: Okay. Go ahead with your argument.

1 MS. WICKOUSKI: So lastly I do feel that the  
2 debtor has, throughout this proceeding, suggested that it's  
3 really -- the court should only look at the fact that the  
4 creditors' interest are impacted by this case, and those are  
5 the ones being protected at this stage. I understand that  
6 this is a claim that may, at some point, go to a litigation  
7 trustee. However, it can't be forgotten that what the  
8 debtor comes in with in terms of their claim is based on  
9 transactions that occurred long before this point.

10 And a litigation trustee, if he ultimately gets  
11 this case, is not going to have any better, greater rights  
12 or better, greater equities than what has already transpired  
13 between the parties and the transactions at issue. So I  
14 don't think that that in itself should have any bearing on  
15 whether there's a freezing order, whether the TRO standards  
16 have been met. This is basically two parties in what I  
17 would say is a contract dispute. And that's really all  
18 that's at issue.

19 THE COURT: For now, I'm struggling to see whether  
20 we get to the June 27th hearing. Okay.

21 MS. WICKOUSKI: And, Your Honor, I lastly want to  
22 talk about an issue that I think was raised in Mr. Hurley's  
23 reply, which is whether the fact that in our discussions  
24 that we, in the negotiations, we requested a carveout and  
25 now have requested a larger carveout, that that is somehow

1 evidence that the plaintiff is at risk of us dissipating  
2 assets. And that doesn't make any sense --

3 THE COURT: Let me -- I'm going to stop you  
4 there, because I probably raised the carveout issue before  
5 Mr. Hurley did. And I don't fault either side for being  
6 unable to come to an agreement. I wish you had. There  
7 obviously was a short-term agreement, but that's -- so I'm  
8 not holding that against you. I'm not drawing any inference  
9 from the inability to come to an agreement. You and your  
10 client maybe are perfectly within your rights to say, no, we  
11 don't think there should be any freezing order, period. So  
12 that part I really am not holding this against you. Okay.

13 MS. WICKOUSKI: Thank you, Your Honor. And we  
14 have consistently -- our client has abided by a total  
15 freezing order for more than two weeks now. And if they  
16 were going to dissipate assets, I mean, technically they  
17 might not have been required to do that when we got past  
18 last Thursday, which was the original TRO hearing date. But  
19 they have. They have abided by that to this moment.

20 And we were hopeful, at least, of a disposition  
21 that would allow them clarity as to what they were able to  
22 pay and be able to pay some bills. Again, we recognize that  
23 the estate has an interest in protecting its position, if  
24 you will. We're not trying to be difficult in terms of an  
25 agreement, but we are simply not able to agree that our

1 client can't spend any money, can't pay its bills, can't pay  
2 its lawyers and essentially is put out of business tomorrow  
3 --

4 THE COURT: Look, again, I'm not -- I really am  
5 not -- I wish you all came to an agreement. You've not been  
6 able to come to an agreement. At the last hearing, I raised  
7 questions about of the assets that StakeHound appears to  
8 have, how much of that is attributable to Celsius, how much  
9 is not attributable. Is it possible to agree that -- and I  
10 understand that Celsius believes that it has a claim for  
11 \$160 million. But for that portion of the assets that are  
12 not attributable to Celsius, can an agreement be reached?  
13 You haven't been able to, so I've got to decide what I've  
14 got to decide.

15 MS. WICKOUSKI: I understand, and --

16 THE COURT: It's not too late to agree. I mean, I  
17 just --

18 MS. WICKOUSKI: Well, I think everybody always  
19 prefers to have an agreement, Your Honor.

20 THE COURT: Go ahead.

21 MS. WICKOUSKI: Your Honor, may we be heard on our  
22 objections to the plaintiff's declarations? I understand,  
23 Your Honor, that you're going to admit them.

24 THE COURT: Yes, go ahead. Go ahead.

25 MS. WICKOUSKI: May I turn this over to my

1 colleague, Mr. Kramer, to present those objections?

2 THE COURT: Sure.

3 MR. KRAMER: Thank you, Your Honor.

4 THE COURT: Good afternoon. You're muted. I'm  
5 not hearing you.

6 MR. KRAMER: Sorry about that.

7 THE COURT: Go ahead.

8 MR. KRAMER: With respect to Mr. Man's  
9 declaration, we object on the grounds that he has no  
10 personal knowledge of the negotiations and the execution of  
11 the relevant contracts that he attached to his declaration.  
12 He admits in his declaration that he only joined Celsius in  
13 February of 2022, which is over a year after those contracts  
14 were negotiated and executed.

15 THE COURT: You're not disputing that the  
16 contracts, that those are in fact the contracts?

17 MR. KRAMER: We're not disputing that, right.  
18 Those are, in fact, the contracts. They were negotiated and  
19 executed over a year before Mr. Man actually joined Celsius.  
20 He had no involvement in the negotiations of those  
21 contracts, and he started his employment after they were  
22 executed. With respect to Dr. Dasser's declarations, we  
23 object to those to the extent that they are expert legal  
24 conclusions about Celsius's likelihood to succeed on the  
25 merits of claims under Swiss law. We contest that those are

1 determinations for the court to make and not a lawyer.

2 Ultimately those are items --

3 THE COURT: With respect to foreign law, foreign  
4 law is provable, including by declarations. For a  
5 preliminary injunction hearing, if you want to call or  
6 submit direct testimony of a Swiss law expert, you can do  
7 that. But that is a proper way to present evidence of  
8 foreign law. I'm not an expert on Swiss law, and it would  
9 be -- so for that part, your objections is overruled.

10 MR. KRAMER: I think we at least want to draw a  
11 distinction between Dr. Dasser's first and second  
12 declarations because we did see the cases that say that  
13 foreign law is provable by an expert. That's certainly  
14 routine.

15 THE COURT: Rule 44.1, I think it is --

16 MR. KRAMER: Right.

17 THE COURT: -- in the Federal Rules of Civil  
18 Procedure.

19 MR. KRAMER: And with respect to his first  
20 declaration, to the extent that he is simply stating Swiss  
21 law, what Swiss contract interpretation is like or what  
22 remedies are available, which is what his first declaration  
23 is doing, that is fine. The reply declaration is just  
24 argument, legal argument in a vacuum. We have no idea what  
25 documents and information he considered in making a



1 determination that the arguments made in StakeHound's  
2 opposition would violate Swiss law or be a violation of the  
3 duty of good faith under Swiss law. All he said is that he  
4 read our opposition and he read the declaration. So to the  
5 extent that he is drawing a legal conclusion and making an  
6 argument in that declaration and not just facts about what  
7 the state of Swiss law is, we do object to that declaration.

8 THE COURT: So for the purposes of the TRO  
9 hearing, your objections overruled.

10 MR. KRAMER: And then finally, with respect to Mr.  
11 Hurley's declaration, as we said in our papers, we object  
12 that this discloses confidential settlement negotiations.  
13 We also object on the grounds that statements of counsel are  
14 not admissible evidence. And finally, on relevance grounds,  
15 as I think Ms. Wickouski was just stating, that the  
16 negotiations of a carveout are irrelevant to the ultimate  
17 issues, certainly on this hearing.

18 THE COURT: I agree. I agree.

19 MR. KRAMER: Thank you, Your Honor.

20 THE COURT: Put it this way. I said this already.  
21 I had hoped you would all be able to agree on it. You  
22 didn't. Full stop. Okay. I'm putting no weight in the  
23 fact that you were not able to agree on a carveout.

24 MR. KRAMER: Thank you, Your Honor. Those are our  
25 objections to the declarations.

1 THE COURT: Okay.

2 MR. HURLEY: May I respond, Your Honor?

3 THE COURT: Let me see if Ms. Wickouski has more  
4 she wants to say.

5 MS. WICKOUSKI: Your Honor, thank you. We have  
6 nothing further. We would ask the court to give us some  
7 clarity in terms of the TRO request because, frankly, at  
8 this moment, leaving the hearing, we're in a bit of a state  
9 of limbo.

10 THE COURT: Well, what I want to ask you -- so  
11 I've told Mr. Hurley that I expect a further brief from him,  
12 and I'm going to give you an opportunity to respond. I  
13 think it was Footnote 5 and some text around that that very  
14 briefly addressed some of the Grupo Mexicano issue. I'm not  
15 sure I agreed entirely with the statements in there. If I  
16 were writing the brief, it probably would have been a  
17 stronger statement.

18 So I'm going to give you a chance. I don't want  
19 to let any of this linger. Okay. So when we finish, I'm  
20 going to come back and ask Mr. Hurley how much time does he  
21 want to do this. I'm going to give you a chance to respond.  
22 If he's going to take a couple of days to do a further  
23 supplemental brief, I'll give you a few more days to file a  
24 response to it. Okay.

25 MS. WICKOUSKI: Thank you, Your Honor.

1 THE COURT: Okay. All right. Is there anything  
2 else that you want to add at this point, Ms. Wickouski?  
3 I'll come back to you on the briefing. Hopefully you  
4 understand what it is I'm asking about. I tried to give  
5 everybody --

6 MS. WICKOUSKI: Yes.

7 THE COURT: -- guidance about what I've -- well,  
8 I've been busy. My law clerks have been busy researching on  
9 this. Okay.

10 MS. WICKOUSKI: Yes, Your Honor. Thank you. It's  
11 very clear.

12 THE COURT: Mr. Hurley, go ahead.

13 MR. HURLEY: Thank you, Your Honor. So just  
14 responding to the objections to the -- I guess I should back  
15 up. And if we're offering declarations into evidence, I'd  
16 like to offer the declaration and I'll respond to the  
17 objections that were made to the declarations, I should say.  
18 So with respect to the objection that I just heard Mr.  
19 Kramer articulate regarding Mr. Man's declaration --

20 THE COURT: Yes.

21 MR. HURLEY: -- he complained that Mr. Man was not  
22 at the company for the execution negotiation of the  
23 contracts. What Mr. Man is doing is attaching documents  
24 that are available to him as an officer of StakeHound,  
25 including emails, including contracts. I don't think we

1 ever contended that he was there personally present for the  
2 negotiations or that we specifically focused in this brief  
3 on the content of those negotiations. What he did was take  
4 business records that are available to him as head of  
5 staking at Celsius currently, and attach them to his  
6 declaration and authenticate them. And we think that is --

7 THE COURT: There was no objection to the  
8 documents. I understand. So the objection to the Man  
9 declaration is overruled.

10 MR. HURLEY: Okay.

11 THE COURT: I'll give it such weight as it's  
12 entitled to receive.

13 MR. HURLEY: And I understand that the objection  
14 to the Dasser declarations have also been overruled, unless  
15 I'm mistaken. Okay. With respect to the Hurley  
16 declaration, I don't think there's an objection to anything  
17 other than the discussion of the spend. And Your Honor has  
18 already addressed that. Unless Your Honor has questions for  
19 me, I --

20 THE COURT: I don't need to hear more of that.  
21 Look, I wish you all could reach an agreement, and you  
22 either will or you won't. What can I say?

23 MR. HURLEY: Okay, and that's all I have, Your  
24 Honor.

25 THE COURT: How much time do you want for a brief?

1 MR. HURLEY: So, you know, we can do it tomorrow.

2 THE COURT: You tell me. It's easy for you to  
3 say, but I suspect that you have some colleagues who are  
4 going to be, at least in the first instance, doing that  
5 work. So tell me.

6 MR. HURLEY: I guess we would propose submitting  
7 it tomorrow by, say, 3:00 p.m.

8 THE COURT: How about 5:00 p.m.?

9 MR. HURLEY: 5:00 p.m., it is, Your Honor.

10 THE COURT: You know, I can remember, when I was  
11 practicing law, my associates would cringe when a judge  
12 would ask when are you going to submit the brief, and it's  
13 their lives who are going to be affected by it. All right.

14 MR. HURLEY: They will appreciate the extra time.

15 THE COURT: Supplemental brief by 5:00 p.m.  
16 tomorrow. All right. Ms. Wickouski, how much time do you  
17 want to respond?

18 MS. WICKOUSKI: Your Honor, we would appreciate at  
19 least having a day, and maybe --

20 THE COURT: How about Friday at 5:00?

21 MS. WICKOUSKI: That's perfect, Your Honor. Thank  
22 you.

23 THE COURT: Okay. After I review the briefs, I'll  
24 decide whether I need -- hopefully, I don't think I'll need  
25 a further hearing, but I'll have those briefs in hand.

1 Okay.

2 MR. HURLEY: Okay.

3 THE COURT: All right. Anything else for today?

4 MR. HURLEY: Not from Celsius.

5 THE COURT: All right.

6 MS. WICKOUSKI: No, Your Honor. Thank you.

7 THE COURT: Thanks very much. And I apologize for  
8 the technical problems I had. Tough issues for me. All  
9 right. Thank you. We are adjourned.

10 (Whereupon these proceedings were concluded at  
11 12:47 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: August 30, 2023

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